

APPEAL NO. 040970
FILED JUNE 17, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on March 29, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable back injury on _____, due to repetitive traumatic activities in the course and scope of employment, and having no compensable injury, had no disability. The claimant appealed the adverse determinations. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable low back injury in the form of an occupational disease on _____. The claimant had the burden of proof on the injury issue and it presented a question of fact for the hearing officer to resolve. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the hearing officer simply did not believe the claimant's testimony and the evidence tending to demonstrate that he sustained a low back injury on _____, due to repetitive traumatic activities at work as claimed by the claimant. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge